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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,149

09/11/2003

Jeffrey H. Mumm

64671-0481

4988

20480

7590

10/07/2004

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EXAMINER

NGUYEN, KHIEM M

ART UNIT

PAPER NUMBER

2839

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/660,149	<b>Applicant(s)</b> MUMM ET AL.	
	<b>Examiner</b> Khiem Nguyen	<b>Art Unit</b> 2839	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-10 and 13-26 is/are allowed.
- 6) ☒ Claim(s) 1,2,11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. Claims 1-2 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art (APA) or EP'017 alone or in view of Davis et al.

The APA or EP'017 discloses a buffer tube for use in a fiber optic cable.

It is noted that the flexural modulus in the APA or EP'017 is not stated to be in the range from about 150 to about 360 kpsi.

However, it is submitted that to form buffer tube with the said claimed flexural modulus range is deemed obvious design choice through routine experimentation, optimum ranges and use of preferred material for achieving the desired results, In re Aller, 105 USPQ 233 CCPA 1955.

Davis, et al. also discloses that it is well known to form buffer tube 12 with a flexural modulus ranging from 60 to about 200 kpsi. (see page 3, 0041)

Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to form the buffer tube of the APA or EP'107 with the claimed flexural modulus range.

The provision of a buffer tube having a wide range of flexural modulus would seem advantageous in providing a cable structure capable of withstanding high axial loads while allowing for more effective installation of the fiber optic cable.

### ***Allowable Subject Matter***

2. Claims 3-10, 13-26 are allowed.


***Response to Arguments***

3. Applicant's arguments, see page 7 of remark, filed 6/14/04, with respect to the rejection(s) of claim(s) 1-2, 11-12 under APA or EP'017 in view of Yang et al. and NPL have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of APA or EP'017 in view of Davis et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khiem Nguyen whose telephone number is 571 272-2096. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TC Patel can be reached on 571 272-2098. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Khiem Nguyen  
Primary Examiner  
Art Unit 2839